COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 17, 1998

PETITION OF

MCI TELECOMMUNICATIONS CORPORATION and MCImetro ACCESS TRANSMISSION SERVICES OF VIRGINIA, INC.

For arbitration of unresolved issues from interconnection negotiations with GTE South, Inc. pursuant to § 252 of the Telecommunications Act of 1996

CASE NO. PUC960124

ORDER RESOLVING OUTSTANDING INTERCONNECTION DISPUTES AND REQUIRING FILING OF INTERCONNECTION AGREEMENT

On January 3, 1997, the Commission issued its Order Resolving Non-Pricing Arbitration Issues and Requiring Filing of Interconnection Agreement ("Non-Pricing Order") between GTE South, Inc. ("GTE") and MCI Telecommunications Corporation and MCImetro Access Transmission Services of Virginia, Inc. (collectively "MCI"). The interconnection agreement between the parties was to be filed within sixty days of entry of the Non-Pricing Order.

The parties requested and obtained a number of extensions to the filing date of the agreement in order to "continue their negotiations to attempt to reach as much agreement as possible

before filing an interconnection agreement."[1] On May 28, 1997, MCI and GTE filed a joint motion requesting until June 6, 1997, to file an interconnection agreement and comments on unresolved issues. The Commission on May 30, 1997, issued an Order Granting Further Extension ("Further Extension Order") to the parties which granted the extension and the request to file comments on the unresolved issues. In addition, the Further Extension Order required the parties to "include relevant supporting documentation to support their positions on the unresolved issues."

On June 6, 1997, both GTE and MCI filed descriptions of the remaining unresolved interconnection issues, including proposed contract language. The Commission's Order of December 17, 1997, directed the two parties to notify the Commission of any settled or resolved issues from their June 6 filings. On January 7, 1998, both parties filed reports of the status of the unresolved issues.

In its June 6, 1997, filing, GTE argues that none of the issues MCI desires to have resolved are properly before the Commission for determination. GTE claims that these matters were not properly raised during the arbitration and the Commission does not have the authority to resolve these issues. MCI's June 6 filing argued that Paragraph 20 of the Non-Pricing Order did not limit the parties to only the arbitrated issues when

[1] See letters submitted to Commission signed by both parties on February 27, 1997, March 21, 1997, and April 10, 1997.

submitting disputed contract language. The Commission finds that each of these issues should and may be resolved as a contractual condition for implementation of the interconnection agreement. The Commission specifically contemplated resolution of such matters under Paragraph 20 of the Non-Pricing Order as a necessary component in the arbitration process to obtain approval of a workable interconnection agreement between the parties. The Commission considers the resolution of these issues to be directly related to conditions established in the arbitration process and permitted under Paragraph 20 of the Non-Pricing Order. In addition, it was the parties themselves who suggested the filing of comments on the unresolved issues and the Commission has provided each with ample opportunity to submit supporting documentation on their own positions and to comment on their opponent's positions.

GTE further argues that the Commission's procedures for resolving contract language disputes do not allow the resolution of substantive disputes. The Commission's authority to resolve disputed contract language and to impose conditions on the parties does not hinge upon whether the language is characterized as procedural or substantive. The Commission has determined that all that remains for the resolution of the remaining unresolved issues is the selection of appropriate contractual language pursuant to Ordering Paragraph 20 of the Non-Pricing Order. The comments and documentation submitted by the parties in their

June 6, 1997, filings sufficiently define and explain the remaining disputed issues for the Commission to determine appropriate resolution.

In its June 6, 1997 filing MCI[2] identified the following remaining disputed issues:

1. Licensing of Intellectual Property (Article III, Section 23.1)

2. Indemnification for Intellectual Property (Article III, Section 23.2)

3. Dispute Resolution (Article III, Section 41.1)

4. Reciprocal Compensation Kick-in (Article IV, Section 3.4)

5. Tandem Reciprocal Compensation Charge (Article IV Section 3.4.1.2)

6. Removing Restrictions on Resale Aggregation (Article V Section 2 and Sections 3.2.1.5-3.2.1.6)

7. Resale of Discount Plans of Services (Article V, Section 3.2.9)

[2] GTE's June 6, 1997 filing addressed the same issues with slight differences in wording of each title.

8. 911 Information Compensation (Article VII, Section 3.5.1)

9. Number Reservation (Article VIII, Section 2.1.4.3)

10. Procedures for Connectivity Billing and Recording (Article VIII Section 4.1.3)

11. Connectivity Billing and Recording (Article VIII, Section 4.7)

12. Information Exchange and Interface (Article VIII, Section 5.1)

13. Performance Reporting - Root Cause Analysis (Article VIII, Section 7.1.11)

14. Performance Reporting (Article VIII, Section 8.1.2.1)

15. Rights of Way - Parity Regarding Selecting Space (Article X Section 1 and 3.3)

16. Definition of Manholes (Article X, Section 2.9)

17. Cost of Cable Removal (Article X, Section 20.7)

18. Performance Reporting (Article XII)

19. Deaveraged Rates for Loops (Appendix C, Section 1.3.1)

20. Rates "To Be Determined" (Appendix C, Section 1.8)

21. Clarification (Appendix C - Attachment 1 - Item 8)

MCI's filing of January 7, 1998 recites that the parties have settled or resolved the following issues:

Issue No. 3 - Dispute resolution (Article III, § 41.1).

Issue No. 8 - 911 information compensation (Article VII, § 3.5.1).

Issue No. 9 - Number reservation (Article VIII § 2.1.4.3).

Issue No. 13 - Performance Reporting - Root Cause Analysis (Article VIII § 7.1.11).

Issue No. 14 - Performance Reporting (Article VIII § 8.1.2.1).

Issue No. 15 - Rights of Way - Parity regarding selecting space (Article X § 1 3.3).

Issue No. 18 - Performance Reporting (Article XII).

Issue No. 19 - Deaveraged Rates for Loops (Appendix C, § 1.3.1).

Regarding Issue No. 19, MCI's January 7, 1998, filing states that it can accept, on an interim basis, GTE's unbundled loop rates of $14.99 per month in density group No. 1, $17.94 per month in density group No. 2 and $24.44 per month in density group No. 3. GTE's response states that it continues to oppose the geographic deaveraging of loop rates until it is allowed the opportunity to recover its historic costs. The Commission believes it is unclear whether this issue is resolved between the parties and therefore will treat it as unresolved in this order.

The parties shall include the agreed upon contract language for the resolved issues in their interconnection agreement.

As to the remaining 14 unresolved issues, having considered the evidence and the pleadings in accordance with the Telecommunications Act of 1996 and other applicable law, the Commission is of the opinion and orders that:

(1) With regard to Issue No. 1, the Commission does not adopt the specific contract language proposed by MCI but will require GTE to make available to MCI all licenses that can be made available without securing additional rights from the licensor. GTE shall cooperate with MCI in MCI's efforts to obtain any licenses or rights MCI needs in order to exercise all

rights and obligations under the parties' interconnection agreement. MCI shall pay any additional cost incurred by GTE as a result of having additional rights extended to cover MCI.

(2) With regard to Issue No. 2, the Commission does not adopt the specific contract language proposed by either party. However, MCI shall indemnify GTE against claims by third party licensors where GTE demonstrates that it has fully complied with its responsibilities required under Issue No. 1, above, and GTE shall indemnify MCI against such claims where MCI can demonstrate that GTE failed to comply with its responsibilities under Issue No. 1, above.

(3) With regard to Issue No. 4, the Commission agrees with GTE's position and does not adopt the proposed contract language submitted by MCI. The trigger point for out-of-balance traffic termination shall be when either party exceeds 60 percent of the traffic between the two. Once that trigger point is reached, compensation shall be paid on the entire portion in excess of 50%. As an example, if the traffic imbalance reaches 61%, the party who is terminating 61% shall be paid compensation on 11%.

(4) With regard to Issue No. 5, the Commission adopts MCI's proposed contract language. The Commission has previously recognized the potential alternative network architecture of new entrants.[3] Therefore, the Commission determines it is

[3] The Commission made a similar finding in Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113. See Ordering Paragraph 5 of the November 8, 1996 Order setting proxy prices and resolving interim number portability for Bell Atlantic-Virginia, Inc.

appropriate to allow MCI to charge a tandem switching rate whenever its switch serves the same geographic area served by a GTE tandem switch.

(5) With regard to Issue No. 6, the Commission does not adopt the entire proposal of either party. The Commission does agree with GTE regarding the deletion of the MCI language in Section 2 and 3.2.1.5. It is not appropriate to include contract language in an agreement between two parties which requires tariff changes subject to this Commission's authority and of potential interest to other parties. In addition, it is neither necessary nor appropriate to define the terms under which tariffed services are to be offered in a contract as the Commission has other procedures to determine disputes between parties on tariff matters. However, with respect to MCI's purchase of tariffed services for resale, GTE shall be required to extend the available volume discounts to MCI according to the terms of the GTE tariffs. GTE may not impose additional restrictions on resale of telecommunications services, therefore GTE's proposed subsection 3.2.1.6 is superfluous and should not be included in the interconnection agreement.

(6) With regard to Issue No. 7, the Commission adopts GTE's proposed contract language. The language proposed by MCI is unnecessary. The Commission imposed only limited restrictions in accordance with the FCC's regulation as set forth in the Commission's December 11, 1996 Order Resolving Rates for

Unbundled Network Elements and Interconnection, Wholesale Discount for Services Available for Resale, and Other Matters 1996 S.C.C. Ann. Rept. at page 233. GTE is already required by the Act and federal regulations to provide, at wholesale discounts, telecommunications services offered on a retail basis, including promotions lasting more than 90 days.

(7) With regard to issue No. 10, the Commission does not adopt the proposed contact language of MCI. However, GTE shall be required to provide bills to MCI in the CABS format as soon as it can reasonably develop the capability to do so.

(8) With regard to issue No. 11, the Commission adopts MCI's proposed contract language. While GTE is rendering bills in the CBBS (non-CABS) format, MCI is entitled to delay payment until MCI has had a reasonable opportunity to review and verify such bills.

(9) With regard to issue No. 12, the Commission adopts GTE's proposed contract language. This is consistent with the Commission's requirement in Ordering Paragraph 7.

(10) With regard to Issue No. 16, the Commission adopts MCI's proposed contract language. The Commission's January 3, 1997 Order Resolving Non-Pricing Arbitration Issues and Requiring Filing of Interconnection Agreement, Ordering Paragraph 13, adequately protects GTE for MCI's access to conduits and other telecommunications pathways, even if the facility is a controlled environment vault.

(11) With regard to Issue No. 17 the Commission adopts the proposed contract language of MCI. The cost of removing retired cable should be borne by the party which owns or controls the cable as the cost of removal should have already been recovered in the rates for services provided by the cable. However, the Commission suggests the parties include additional contract language in the Agreement to further reflect MCI's obligation to remove cable from GTE's conduit or poles when it is the entity that owns or controls cable which it subsequently retires.

(12) With regard to Issue 19, the Commission agrees with MCI's position and requires the adoption in this interconnection agreement of the deaveraged rates and density zones for loops as submitted by GTE on July 8, 1997, in Case No. PUC960118. The Commission previously required in its Order in this docket dated December 11, 1996, that rates for unbundled loops be deaveraged into three density zones.

(13) With regard to Issue No. 20 the Commission adopts the proposed contract language of MCI. For rates that are "to be determined," the terms of the Commission's December 11, 1997 pricing order are all inclusive, albeit interim, for the rates listed. Rates to be determined by the parties are those where both parties agree either (a) that some form of omission has occurred or (b) that some later calculation would be made.

(14) With regard to Issue No. 21 the Commission clarifies that the rates for traffic imbalance are the combination of the

usage rates of end-office switching, transport, and where appropriate, tandem switching. As set out in Attachment A to the Commission's pricing order of December 11, 1996, end-office switching is $.0029 per minute, common transport is $.0009 per minute per leg, and tandem switching is $.0019 per minute.

(15) MCI and GTE shall submit an interconnection agreement in this docket incorporating the applicable findings and contract language adopted by the Commission as indicated above together with their negotiated language within 30 days of entry of this Order.